

**MINUTES OF SPECIAL MEETING**

**BOARD OF APPEALS AND ADVISORS  
CITY OF CHULA VISTA, CALIFORNIA**

June 26, 2007

City Council Chambers- City Hall  
276 Fourth Ave. Chula Vista, CA 91910

5:15 PM

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**CALL MEETING TO ORDER:** Chair West called meeting to order at 5:15 PM.

**ROLL CALL:** Romo, Flach, Turner, West, Buddingh, Heironimus, Buencamino- Andrews

**MEMBERS ABSENT:** Vice-Chair Turner and Member Heironimus

**MEMBERS ABSTAINING:** None

**CITY STAFF PRESENT:** Jim Sandoval, Director of Planning and Building; Brad Remp, Assistant Director/Deputy Building Official of Planning and Building; Sharon Marshall, Senior Assistant City Attorney; Eileen Dimagiba, Senior Office Specialist (Recording Secretary); Diana Vargas, Senior Administrative Secretary

**OTHERS PRESENT:** Scott Vinson, Carmelita Vinson, Andrew Griffin, Richard Dascoli, Charles Moore, David Bright, Bill Hall, Patti McKelvy, Barbara Brown, Lupe Soto, Isabel Hall, Lisa Cohen, Jose Uribe, Jay Norris, Chris Lewis, Jose Morales, Brad Wilson, Dan O'Hanlon, Angelica Martinez, Karen Vargas, John Smith

1. **SPECIAL ANNOUNCEMENT:** Chair West said opening statement for procedure for this special meeting.
2. **DECLARATION OF EXCUSED/UNEXCUSED ABSENTEEISM:** Vice-Chair Turner and Member Hieronimus have excused absences.
3. **APPROVAL OF MINUTES:** April 9, 2007 and June 11, 2007 (MSU 5-0-2-0)
4. **NEW BUSINESS:**

A. Property Transfer Report

Introductory remarks from Brad Remp, Assistant Director/Building Official for Planning & Building. Stated that time for group presentations would have time limit of 15 minutes, and individuals each would have 5 minutes to speak. He introduced Jim Sandoval, Director of Planning & Building to speak.

1. Jim Sandoval, Director of Planning and Building introduced himself and presented information on the proposed Property Transfer Report ordinance. He said one reason the City of Chula is proposing this ordinance to Council is because in the last 5 years, illegal construction in homes as they transfer ownership has been an increasing problem, and the City is not in the condition that it used to be. Code Enforcement has increasingly been dealing with this issue daily; this issue being more a health and safety issue above anything else. The City has also talked to other communities in California that have adopted similar ordinances like this one, with positive results. He said he feels that this ordinance is a tool that would help solve these illegal construction problems.

2. Brad Remp spoke and said as a result of the last Board of Appeals & Advisors Meeting on June 11, 2007, City staff has made the appropriate changes to this proposed ordinance and have provided additional information after hearing comments from the Board and the public that attended that night. He said the purpose of this special meeting tonight was at the request of the Board, so additional information and comments can be conveyed. Mr. Remp started his presentation by saying that the purpose of this ordinance, which was to facilitate the sharing of information between sellers and buyers of property in an effort to detect and resolve illegal construction. This ordinance requires sellers to obtain a report from the City and provide it to the prospective buyer prior to completion of the sale. The report will contain the City's information about the property including zoning, building permit history, and any active Code Enforcement cases and will cost \$70 to obtain. He reiterated that problems identified as a result of the information will not preclude the sale or transfer of the property, and that voluntary on-site inspections are not required but will be provided upon request. Mr. Remp introduced some changes made since June 11, 2007 meeting. First one was in section 15.21.030 on page three, changes made to specify listed or "offered" properties; another change made under section 15.21.050 confirms it's the property owner's responsibility to secure the Tenant's permission to make the property available for inspection; under section 15.21.060 on page 4 changes to further clarify intent of a voluntary inspection; under section 15.21.090 on page 5 changes made regarding remediation. Mr. Remp made a presentation addressing questions from the 3-page memo sent to the Board from the Pacific Southwest Association of Realtors. Mr. Remp said with this proposed ordinance, the City has constructed the least invasive method in dealing with a significant Code Enforcement problem the City has. He provided examples of other cities in California with similar ordinances. He stated that the City of Escondido has a current proactive inspection program specifically for this issue. He also addressed a particular Code Enforcement case that had illegal construction and had 26 beds in the house and was being rented, and a health and safety hazard of a bbq set up providing heating to the house.
3. Mr. Remp presented a "sample report" of how the Property Transfer Report would look. This is the report that would have a fee of \$70 and the report that would be obtained from the City's database system indicating the most accurate building permit history on a particular property, and any open or outstanding Code Enforcement violations on the property, from the database system.

**Questions/Comments from the Board:**

1. Member Buddingh had a question for Mr. Remp about the details of section 15.21.060 and whether the scope of inspection is for the "on-site" inspection. Mr. Remp said yes.
2. Member Flach asked Mr. Remp if this only addresses residential properties and not commercial. Mr. Remp said yes, properties that are single-family-dwellings.
3. Member Buencamino-Andrews had a question about whether or not the memo from the Pacific Southwest Association of Realtors (PSAR) already addresses this ordinance and how memo mentioned that realtors already have 7 different forms that require disclosing this information. Mr. Remp answered by saying none of those forms indicated specifically the responsibility for the seller or the agent to do permit research with the City and to provide that information.
4. Member Buddingh made comments referring back to the memo from PSAR and their disclosure forms. He referred back to section five on the disclosure statement in bold that says, "Buyers and sellers may wish to obtain professional advice and/or inspections of the property and to provide for appropriate provisions and a contract between buyers and sellers with respect to any advice, inspections, defects...". He says that this ordinance is doing exactly this. He stated that realtors need to become more trained in disclosing this information to potential buyers, and with this ordinance the City will just provide the information required. He asked the public if they would like to be sued. He also asked with a show of hands that were realtors, residents, and non-realtors and residents of the

City of Chula Vista. He stated that he doesn't see what the big issue is with this ordinance, because nothing about this ordinance is delaying the transaction of the sale of the home. He said it's just a \$70 informational report. Several members of the public shouted back answers to Member Buddingh. He stated that realtors are already supposed to do this anyway, and again, this ordinance is not a bad ordinance.

**5. COMMUNICATIONS (PUBLIC COMMENTS/WRITTEN CORRESPONDENCE) (SPEAKER CARDS):**

- **Scott Vinson**, Real Estate Agent, stated that he is opposed to this ordinance because he has never reviewed building permits and that they are not experts in building codes. He also stated that the City should not have this report at the "point of sale" because that is not the right time for this to happen
- **Carmelita Vinson**, Real Estate Agent Coldwell Banker and Scott Vinson's wife, stated she is opposed to this ordinance because realtors should not be held responsible and properties are taking longer to sell and it is not right to do this to them. She said, "Who would be liable?"
- **Andrew Griffin**, resident of Chula Vista for 25 years and licensed general contractor, stated he is in favor of this ordinance. He talked about a current Code Enforcement case he is dealing with and property owner's last name is Murel. He said they purchased the house through a realtor in the City of Chula Vista, and did not know that there was a remodeling project that was recently done without permits to that home they purchased. He said that before they closed Escrow, the Code Enforcement officer advised the realtor of this problem, and the realtor "had the audacity" to ask the Code Enforcement Officer to wait to go forward with this case against the Murels, until he closed Escrow. Code Enforcement notified the realtor and the seller of the violation. However nothing was done about it on the realtor's part, and Escrow closed, leaving the Murels with this big illegal construction problem. And he said that it was not until the Murels moved into the home that they discovered that the remodeled bathroom was lacking plumbing piping and they started complaining to the realtor about it, and then they learned the severity of their problem. This Code Enforcement issue is still going on right now, costing the Murels thousands of dollars, and they have no recourse against the realtor because that real estate company is now bankrupt with dozens of judgments of fraud outstanding against them. Mr. Griffin ended his comments by saying that this ordinance would be a big benefit to everyone concerned. The buyer would be protected from the possibility of a disaster like the Murels', the City Of Chula Vista would be given the resources to protect the buyers, and realtors would avoid the possibility of problems of a seller failing to disclose an unpermitted improvement.
- **Richard D'ascoli**, Pacific Southwest Association of Realtors, is opposed to this ordinance. He stated that he is very disappointed with the way this whole process has worked with the City so far, and is disappointed that the City didn't go to the Chamber of Commerce with is. He said that this is a big "business issue" for the City and would not be good for Chula Vista. He also mentioned that the first paragraph of the staff report that states, "...enhance the City's ability to resolve Code Enforcement violations.... is not clear and doesn't see how this ordinance will help resolve that because Code Enforcement is not involved anywhere in the process. He also asked what will the \$70 report would cover?  
(Richard D'ascoli went over his time limit of five minutes, there becomes confusion on the exact procedures on time limits for a group presentation.)
- **Sharon Marshall, Deputy City Attorney for City of Chula Vista** speaks and says that Mr. D'ascoli has gone over his time limit and that according to Council Rules, if you are speaking for an organization, you can receive up to thirty minutes to speak, if requested, but other members from that organization cannot speak after you.
- **David Bright**, Attorney for Southwest Pacific Association of Realtors, addresses this time issue with Sharon Marshall and says that we are breaking Brown Act Compliance in that when a person speaks, they don't speak on behalf of every single member, they are speaking on behalf of SPAR and members have the individual right to speak, and he doesn't understand why they are not allowed to speak after Mr. D'ascoli.
- **Sharon Marshall, Deputy City Attorney for City of Chula Vista** responds by saying that Council has adopted rules pursuant of the Brown Act in order to be able to regulate meetings in a timely fashion and those rules say if you are speaking for an organization, you are to tell the Chair, and the Chair will give you up to thirty minutes to do your presentation, but that means you are speaking for the organization and the members of that organization. David Bright asks if there are rules on this,

and Sharon Marshall says that there is and they are the Council Rules. Mr. Bright wants to know what rule that was exactly. Sharon Marshall, leaves the dais to go and get a copy of the ordinance. It is ordinance 2.04.240. There is back and forth discussion between Sharon Marshall and David Bright on this time issue that goes on for a couple more minutes. It is settled that Mr. D'ascoli is here representing the "entity" of PSAR, and will be allowed to speak for fifteen minutes. Mr. Remp also steps in and says that he was responsible for telling Mr. Dascoli that he can receive fifteen minutes to speak.

(Mr. D'ascoli is given another ten minutes to speak by Chair West, and his attorney David Bright will be given ten minutes to speak)

- **Richard D'ascoli** continues his presentation and states concern if the city's internet goes down, and if the report will not print, this will delay the sale of the property. He asked who will be liable for this? He also states that he disagrees with the statement on page 2 of staff report, in the first paragraph that says that "Staff investigations have revealed that frequently such unpermitted work represent significant fire and life safety hazards." He says that City has not provided enough numbers and statistics to confirm this, and this information is vague, and he reiterated that this is not a good business decision for the City.
- **David Bright**, Attorney for Pacific Southwest Association of Realtors stated his opposition to this ordinance. He stated that in 1987, California passed Law (Civil Code 20.79.3), and states it is excluded as a real estate agent or broker and they are not responsible for pulling building records or permits. He said this ordinance is contrary to this California law. He also said their education does not require this, and real estate agents are not qualified to do this. He also said that agents are to "stay out of this (property transfer report) issue" and to put this burden on the seller or agent will cause problems.
- **Bill Hall**, former president of Chamber of Commerce, stated his opposition to this ordinance. He stated seven concerns. First, he noted the decline in home sales and how the market is bad. Second, he said that this is not a good time to experiment with this kind of thing. Thirdly, he talked about the intent of the report and how it says the intent is to achieve the goal of code compliance. He says that this report does not do this. His fourth concern was about the open government implications and problems the City has in giving notice to the public on this proposed ordinance, with supporting details. His fifth concern was that providing this report will be time consuming. His sixth concern was that this ordinance would impact the west side of Chula Vista more than the east side. His last concern was in regards to the long-term impact on revenues for the City. He lastly said that this ordinance is poorly timed.
- **Patti McKelvy**, realtor, stated her opposition to this ordinance and said she believes Chula Vista has risen because of "points of sales". She says that the City is stringent on everything they do. She says this ordinance will have negative impact on the City and this ordinance will be another "layer" in the home buying process. She also said that if this is such a big problem with the City, why haven't more than 27 cities in California adopted this type of ordinance.
- **Barbara Brown**, Chula Vista resident and a realtor, stated her opposition to this ordinance. She says that the Association of Realtors is the only body that lobbies for the homeowner and the only ones that protect "private property rights". She says that she would not know how to interpret this report to her buyer.
- **Lupe Soto**, realtor and resident of Chula Vista, stated her opposition to this ordinance. She said she "represents 5 of the 27 cities in California that have adopted this type of ordinance". She stated that in six months, this report could be different and asked who will be responsible for what? She said that she as a realtor isn't required to know Code Enforcement.
- **Isabel Hall**, Realtor with McMillin Realty, stated opposition to this ordinance and said that this ordinance will indeed impact the sale of a home, and delay the escrow and sale process of the home. She said that the buyers are "free" not to get this report from the City and that this ordinance will be detrimental to the west side of Chula Vista.
- **Lisa Cohen**, CEO of Chamber of Commerce, stated her opposition to this ordinance and that it will not promote a business-friendly environment. She referenced the letter given to each of the Board of Appeals & Advisors members and stated that this report will make the City worse.
- **Jose Uribe**, realtor with Prudential, stated his opposition to this ordinance by stating that realtors will not be able to interpret this report.
- **Jay Norris**, from PSAR, Chamber of Commerce, & First American Title Insurance Company, stated his opposition to this ordinance and said that Title Insurance Companies already have coverage for

this kind of problem. He said that since 1995, they have had 300 title claims and that these statistics say that this is not a huge issue.

- **Chris Lewis**, from McMillin Realty stated his opposition to this ordinance and stated that realtors should not become the "policemen" for Code Enforcement for the City.
- **John Smith**, realtor and homeowner, stated opposition to this ordinance and said that disclosures already "strongly advise" to do something like this stating it is the "buyers responsibility". He said that Code Enforcement is the City's responsibility and that it shouldn't be forced on the realtors. He also said that this would be unfair because homeowners that have no violations on their property would have to pay \$70 for the report also.

(Chairman West calls for a 5-minute break)

- **Jose Morales**, homeowner and businessman, said that he is in favor of this ordinance. He stated that he bought a property had a garage that was illegally converted, and he had to pay thousands of dollars in fines to correct this problem because his realtor did not tell him that this construction was illegal. He stated that he also has another house that he bought that had an illegal 3<sup>rd</sup> bedroom in it. He said that he is currently working with code enforcement and for this particular case so far, he has paid about \$900.00 in fines because the seller did not disclose to him information that this house is supposed to be only 2 bedrooms, when it had illegally had an extra room. He said that he is currently struggling to make the money to correct these problems, but says that it's been hard. He said that no one told him to research building record information on the properties he was buying; something he says the realtors should have told him to do, and he is very happy that the City of Chula Vista is considering a law on this. He says that right now, tonight, he is hearing realtors talk about nothing but money and profit. He reiterated that he hopes that the City will pass this ordinance to help solve these houses that are selling with illegal construction. He said that realtors should be able to afford the \$70 fee for this report, when he is paying thousands of dollars in fines for something he didn't do. He also said that it is not fair to have the buyer pay all of these fines in illegal construction, when they didn't know about the illegal construction when they bought the house.
- **Brad Wilson**, general contractor and realtor, stated his opposition to this ordinance. He said that he has questions on the statement in the ordinance that says, "significant reduction in illegal building" and questions on how the issue of when the "add-on" was discovered would be addressed. He said that this ordinance would hurt western Chula Vista
- **Dave Wilson**, stated that he is probably one of the few realtors that is in favor of this ordinance. He said his reason being that he is soon to be retired from the real estate business and he is looking for another career where he can make additional money, and would be interested in maybe setting up a consulting firm for the City of Chula Vista in helping to provide this property transfer report. He also added that the more you pass ordinances like this, the bigger the "real estate file" gets, and more money will be made.

#### Questions/Comments from the Board:

- **Member Buddingh** asked Brad Remp how long is it for an on-site inspection and if City staff would be able to handle the "flood" of inspections for this ordinance? He said that he would like to see the "waiver language" in this ordinance, asked if there is relief for seller of any future lawsuits, and asked to include language of "reimbursement" somehow to the seller.
- **Member Flach** commented on how the main thing that realtors are fighting for is "buyer's responsibility" when it is supposed to be the realtor's responsibility for this protection.
- **Member Romo** commented on a time-constraint issue, and the issue of the Title Insurance Waivers. He said he wants to address these issues. He commented to the public that these codes are in place, and this ordinance is being proposed for health and safety.
- **Brad Remp**, addressed the issue on Title Insurance coverage. He said that if it says on this "insurance" that Title Companies insure what is not caught in transaction process, he would like look into this further. He also asked if all transactions get this level of insurance. Several members in the audience indicated yes.
- **Member Buddingh**, asked if a person can get more than the allotted \$25,000 in insurance coverage if they paid more? The response from the audience was no.
- **Member Buencamino-Andrews** asked Mr. Remp if there would be a back up computer in place with all this information, just in case the main computer breaks down? Brad responded by

saying there should be no delay in retrieving the information. The City has an elaborate file retrieval system.

- **Jim Sandoval** asked how long is the term of this insurance? And how many years? And could Code Enforcement send these cases back to the Title Company? He commented that this meeting was a good education point for our staff and that we were not aware that we can send our code enforcement cases related to this issue, back to their title companies.

**Approval of Ordinance:**

**MSC (West/Buddingh) (4-0-2-1)** Motion was made to recommend adoption of the Property Transferred Report to Council with specific changes and modifications. It was recommended by Chairman West to adopt the ordinance as it was presented tonight, but to incorporate additional changes and modifications into the modified ordinance. Staff will ask City Attorney's office to look into proposing "waiver language" and also for staff to looking into the Title Insurance issue. Mr. Remp stated that the action taken tonight on this ordinance is not a final adoption, but a recommendation.

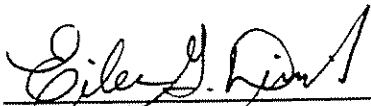
6. **CHAIRMAN'S COMMENTS/REPORTS:** None

7. **BUILDING OFFICIAL'S COMMENTS/REPORTS:** None

8. **ADJOURNMENT:** MSC (West/ Buencamino-Andrews) (4-0-2-0) Member West adjourned this meeting at 8:28 PM to a regular meeting in the Planning and Building Conference Room #137 on Monday, July 9<sup>th</sup>, 2007.



BRAD REMP, C.B.O.  
ASST. DIR. OF PLANNING & BUILDING/ BUILDING OFFICIAL  
SECRETARY TO THE BOARD OF APPEALS & ADVISORS



MINUTES TAKEN BY:  
EILEEN DIMAGIBA, SR. OFFICE SPECIALIST  
PLANNING & BUILDING DEPARTMENT  
(RECORDING SECRETARY)